

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

VUUZLE MEDIA CORP., VUUZLE
MEDIA CORP LTD., RONALD SHANE
FLYNN, AND RICHARD MARCHITTO,

Defendants, and

VUMU MUSIC LLC,

Relief Defendant.

Civil Action No. 2:21-cv-1226 (KSH) (CLW)

Motion Day: July 18, 2022

MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR LEAVE TO WITHDRAW
AS COUNSEL FOR VUUZLE-US

I. STATEMENT OF FACTS

Dickinson Wright PLLC (“Dickinson Wright”) and three of its lawyers of record in this action (Jacob S. Frenkel, Aimee R. Gibbs, and Seth B. Waxman) appeared *pro hac vice* on behalf of defendant Vuuzle Media Corp. (“Vuuzle-US”) on or about March 26, 2021. Dickinson Wright lawyer Melissa Ann Alcantara, who is admitted to practice before this Court and in New Jersey, appeared on March 2, 2021. As set out in the accompanying Motion, the attorney-client relationship between Dickinson Wright and Vuuzle-US has broken down irrevocably, such that Dickinson Wright no longer can represent Vuuzle-US and requiring that Dickinson Wright withdraw as counsel for Vuuzle-US.

II. ARGUMENT

WITHDRAWAL IS PROPER UNDER RULE
OF PROFESSIONAL RESPONSIBILITY 1.16(b)(1)

The New Jersey Rules of Professional Conduct (“RPC”) govern the conduct of attorneys before the District of New Jersey. L. Civ. R. 103.1(a); *see In re Congoleum Corp.*, 426 F.3d 675, 687 (3d Cir. 2005). Counsel may withdraw from representing a client if “withdrawal can be accomplished without material adverse effect on the client, under RPC 1.16(b)(1).

In determining whether withdrawal of counsel is appropriate, the Court must take into consideration: (1) the reasons why withdrawal is sought, (2) whether the withdrawal may cause prejudice to the litigants, (3) the harm withdrawal might cause to the administration of justice, and (4) the degree to which withdrawal will delay resolution of the case. *Cuadra v. Univision Comme’ns, Inc.*, No. CIV.A. 09-4946 JLL, 2012 WL 1150833, at *5 (D.N.J. Apr. 4, 2012) (internal citation omitted).

RPC 1.16(b)(5) and (6) provide that “a lawyer may withdraw from representing a client if,” among other grounds, “the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled,” or “the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.”

First, although the specific reasons for withdrawal cannot be fully set out because of the confidentiality that RPC 1.6 requires, suffice it to say that the grounds covered by RPC 1.16(b)(5) and (6) provide the basis for needing to withdraw.

Second, withdrawal will not prejudice the litigants. No trial date has been set, fact discovery does not end until September 19, 2022, and expert discovery ends on January 30, 2023. In addition, concurrent with this Motion, Dickinson Wright seeks a 30 to 45 day extension of all dates to assure no possible prejudice to either Plaintiff or Vuuzle-US.

Third, and relatedly, withdrawal will cause no harm to the administration of justice. This matter will continue against defendant Vuuzle-US, in the normal course. On May 19, 2022, the Court entered a default against Defendants Ronnie Shane Flynn, Vuuzle Media Corp. Limited, Richard Marchitto, and Vumu Music, LLC for failure to plead or otherwise defend. As Vuuzle-US, through counsel, has informed the Court, Vuuzle-US no longer is an operating entity.

Fourth, Dickinson Wright's withdrawal will not materially delay resolution of the case. To avoid any possible prejudice, Dickinson Wright seeks only 30-45 days to allow Vuuzle-US to secure substitute counsel. Given there is no trial date set, such extension will not delay ultimate resolution of the case.

III. CONCLUSION

For the foregoing reasons, Dickinson Wright requests it be given leave to withdraw as counsel for Vuuzle-US.

Respectfully submitted,

DICKINSON WRIGHT, PLLC

June 21, 2022

s/ *Melissa A. Alcantara*

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